

# Commitment of Incarcerated Adults and Adults Found Not Guilty by Reason of Insanity

## Module # 8

### Virginia DBHDS Certification Training for Pre-admission Screening Evaluators and Independent Examiners

#### Commitment of Incarcerated Adults

(Va. Code § 19.2-169.6)

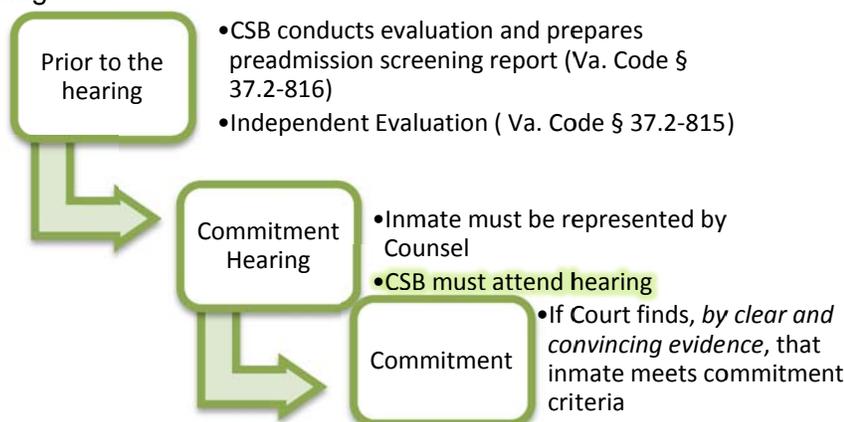
- Scope
  - Applies to adults in local correctional facilities (i.e., jails)
    - Pre-trial inmates
    - Inmates convicted but not yet sentenced
    - Inmates sentenced to a jail
  - Does NOT apply to adults in prisons (facilities operated by DOC)
  - Does Not APPLY to adults found incompetent to stand trial and hospitalized for restoration

#### Commitment Criteria

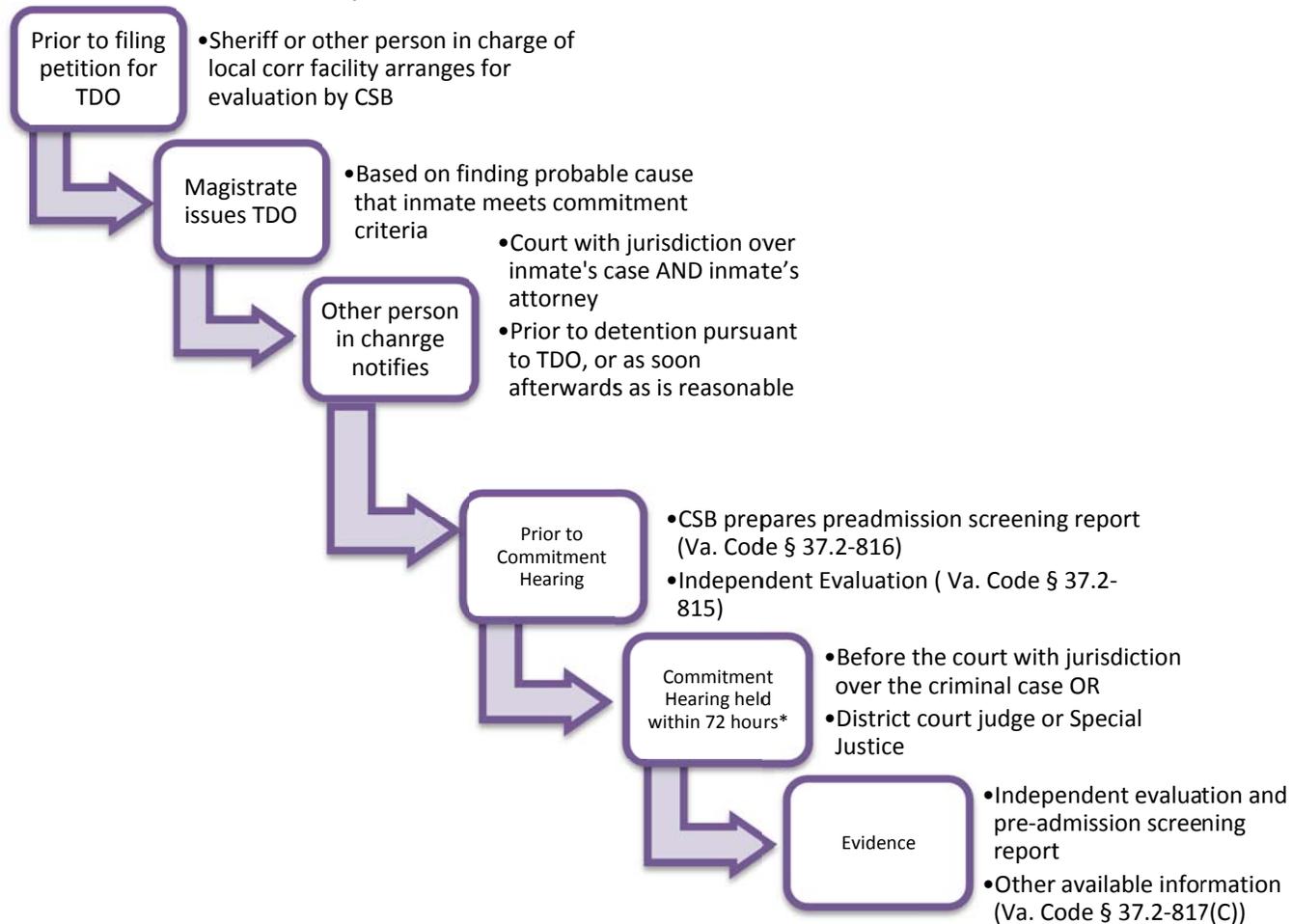
- The inmate has a mental illness
- There exists a substantial likelihood that, as a result of the mental illness, the inmate will, in the near future
  - Cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant information OR
  - Suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information
- The inmate require treatment in a hospital rather than the local correctional facility

#### Commitment Process: Two Pathways

- Pathway 1: The court with jurisdiction over the inmate's case holds a commitment hearing



- Pathway 2: The sheriff or other person in charge of the local correctional facility where the inmate is incarcerated petitions for a TDO



– Pathway 2 Notes

- As in Pathway 1, the inmate must be represented by counsel at the commitment hearing
- If 72 hour period ends on a day that the court is lawfully closed, hearing must be held by close of business on the next business day
- Available evidence according to Va. Code § 37.2-817(C)
  - The recommendations of any treating or examining physician or psychologist licensed in Virginia, if available
  - Any past actions of the person,
  - Any past mental health treatment of the person,
  - Any examiner's certification,
  - Any health records available,
  - Preadmission screening report,
  - Any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing

### Presence of Examiners at Commitment Hearing

- Independent Examiners
  - If not physically present, available whenever possible for questioning through two-way communication system (Va. Code § 37.2-804.1)
- CSB Examiners
  - Shall attend the hearing in person, OR
  - If not practicable, participate through two-way communication system (Va. Code § 37.2-804.1)
  - When the hearing is outside the CSB's service area and participation is not practicable, arrangements shall be made for local CSB to participate

### Length of Commitment

- Initial commitment: **30 days**
- Recommitment is permitted, following a hearing
  - For pre-trial inmates:
    - Extended for periods of **60 days**
    - Hospitalization may NOT continue beyond trial or delay trial as long as inmate remains competent to stand trial
  - Inmates convicted by not yet sentenced and Sentenced inmates:
    - Extended for periods of **180 days**
    - Hospitalization may NOT continue beyond the maximum sentence length

### Additional Provisions

- Prohibitions of Other Modes of Treatment
  - Inmates may NOT apply for voluntary admission
  - Inmates cannot be ordered to mandatory outpatient treatment
- If inmate's criminal case is still pending, court MAY order admitting hospital to perform additional evaluations during the inmate's hospitalization
  - Competence to Stand Trial
  - Mental state at the time of the offense

## Commitment of NGRI Acquittees on Conditional Release

(Va. Code §§ 19.2-182.8 and -182.9)

### NGRI Overview

- After a defendant has been found Not Guilty by Reason of Insanity (NGRI), he or she is hospitalized for evaluation, and often for a period of treatment
- Typically, NGRI acquittees are discharged from the hospital on conditional release. The CSB implements the court's conditional release orders and reports to the court every 6 months
  - The statutory provisions outlined below do NOT apply to individuals who are released without conditions.

### Commitment Process: Two Pathways

- First Pathway: Non-Emergency Revocation (Va. Code § 19.2-182.8)
  - *This is the preferred pathway when an NGRI acquittee requires hospitalization*
  - If the court that released an NGRI acquittee on a conditional release plan finds reasonable ground to believe that the acquittee meets revocation criteria (see below), then the court may order an evaluation by a psychiatrist or clinical psychologist

#### **Revocation Criteria**

The court may revoke the acquittee's conditional release if the court finds, by a preponderance of the evidence, that the acquittee:

- Has violated the conditions of his conditional release, or
- Is no longer a proper subject for conditional release;

AND

- Has a mental illness or intellectual disability and requires hospitalization

- Acquittee Rights at the Revocation hearing
  - Adequate Notice
  - To be present
  - Assistance of counsel
  - Introduction of evidence
  - Cross-examine witnesses
- Second Pathway: Emergency Custody Order (Va. Code § 19.2-182.9)
  - Magistrate, district court judge, or special justice issues an ECO
  - ECO Criteria:

#### **ECO Criteria**

Probable cause to believe that an acquittee on conditional release

- Has violated the conditions of his release, or
- Is no longer a proper subject for conditional release

AND

- Requires hospitalization

- CSB evaluates TDO or release within 8 hours

**TDO Criteria**  
It appears from all evidence readily available that an acquittee  
Has violated the conditions of his release, or  
Is no longer a proper subject for conditional release;  
  
AND  
  
Requires emergency evaluation to assess the need for hospitalization

Revocation Hearing within 72 hours (if 72 hours ends on a day that the court is lawfully closed, hearing must be held by close of business on the next business day)